



## **COTTONWOOD HEIGHTS BOARD OF ADJUSTMENT MEETING AGENDA**

Notice is hereby given that the Cottonwood Heights Board of Adjustment will hold a **Work Session Meeting** (Room 124, City Council Work Room) beginning at **5:30 p.m.** and a **Business Meeting** (Room 5, Council Chambers) beginning at **6:00 p.m.** on **Thursday, April 13, 2017**, located at 2277 East Bengal Boulevard, Cottonwood Heights, Utah.

### **5:30 p.m. WORK SESSION (Room 124)**

- 1.0 **Review Business Meeting Agenda**  
*(The Board will review and discuss agenda items)*

### **6:00 p.m. BUSINESS MEETING (Room 5)**

- 1.0 **WELCOME / ACKNOWLEDGEMENTS**
- 2.0 **ACTION ITEMS**
  - 2.1 **(Project #BOA 17-001) Action on a request from Thomas and Lisa Kaminski for a variance from the accessory building rear yard lot coverage requirement at 1560 East 7200 South**
  - 2.2 **(Project #BOA-17-002) Action on a request from Laurens Debirk for the expansion of a non-complying structure at 2118 East Lorita Way**
  - 2.3 **Approval of April 13, 2017 Minutes**  
*(The Board of Adjustment will approve the minutes of the April 13<sup>th</sup>, 2017 meeting after the following process is met. The recorder will prepare the minutes and email them to each member of the Board. The members will have five days to review the minutes and provide any changes to the recorder. If, after five days there are no changes, the minutes will stand approved. If there are changes, the process will be followed until the changes are made and the Board is in agreement, at which time the minutes shall be deemed approved.)*
- 3.0 **ADJOURNMENT**

On Friday, April 7<sup>th</sup> by 5:00 p.m., a copy of the foregoing notice was posted in conspicuous view in the front foyer of the Cottonwood Heights City Offices, Cottonwood Heights, Utah. A copy of this notice was sent to the Salt Lake Tribune and Deseret News, newspapers of general circulation in the City by the Office of the City Recorder. The Agenda was also posted on the City's website at [www.cottonwoodheights.utah.gov](http://www.cottonwoodheights.utah.gov) and the State Public Meeting Notice website at <http://pmn.utah.gov>.

DATED THIS 7<sup>th</sup> DAY OF APRIL 2017

Paula Melgar, City Recorder

Members may participate in the meeting via telephonic communication. If a Member does participate via telephonic communication, the Member will be on speakerphone. The speakerphone will be amplified so that the other Members and all other persons present will be able to hear all discussions. In compliance with the Americans with Disabilities Act, individuals needing special accommodations or assistance during this meeting shall notify Paula Melgar, City Recorder, at (801)944-7021 at least 24 hours prior to the meeting. If you would like to submit written comments on any agenda item to be received by the Community and Economic Development Director, please do so no later than April 12<sup>th</sup> at 12:00 p.m. Comments can be emailed to [bbernt@ch.utah.gov](mailto:bbernt@ch.utah.gov). Special accommodations for the hearing or visually impaired will be made upon a request to the office of the Cottonwood Heights City Recorder (801)944-7020. We would appreciate notification two working days prior to the meeting. TDD number is (801)270-2425 or call Relay Utah at #711.



**Board of Adjustment Staff Report**  
Meeting Date: April 13, 2017



**FILE NUMBER/**  
**PROJECT NAME:** BOA-17-001

**LOCATION:** 1560 East 7200 South (Parcel #22-28-176-003)

**REQUEST:** Variance from Accessory Building Rear-Yard Lot Coverage Requirement

**APPLICANT:** Thomas and Lisa Kaminski (512-799-5139)

**APPLICANT'S PROPOSAL**

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The applicant is requesting a variance from the rear-yard lot coverage requirement for accessory structures, in order to construct a 12' x 30' attached deck to the rear of their home. There is currently an existing 1,620-square foot accessory garage in the rear yard of the property that covers 24.4% of the rear yard (the rear yard is 6,630 square feet). City ordinance 19.76.030.B states, "No accessory building or group of accessory buildings in any residential zone shall cover more than 25% of the rear yard." The current accessory building complies with the ordinance (i.e.  $1,620/6,630 = 24.4\%$ ). The applicant's proposal to construct an attached deck, which is considered to be an addition to the primary structure of the home, makes the rear yard lot area smaller, which in turn makes the accessory building exceed 25% of the rear-yard area.

**Development Information**

- Parcel size – 14,810.4 square feet (0.34 acre)
- Primary structure size – 3,162 square feet
- Accessory Garage size – 1,620 square feet
- Existing rear yard area – 6,630 square feet
- **Existing rear yard lot coverage – 24.4%**
- Proposed deck size – 360 square feet (12' x 30')
- Proposed rear yard area – 5,910 square feet
- **Proposed rear yard lot coverage – 27.4%**

**BACKGROUND**

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**Previous Building Permits**

Significant work (see breakdown below) has been completed on the property since 2014 by the previous owner. Prior to this work, there was no accessory garage, and the primary structure was 1,167 square feet. A permit was first issued in 2014 to construct a 1,995 square-foot addition to the home, consisting of lower-level garage bays and upper-level living area. This increased the size of the primary structure from 1,167 square feet to 3,162 square feet. Subsequently, a permit was issued to construct a 1,620 square-foot accessory garage in the rear yard. The applicant at the time was aware of the rear-yard coverage requirement, and designed the accessory garage to comply with the 25% rear-yard coverage requirement (24.4% coverage).



### Building Permit History

- Prior to 2014, the structure on the property was as 1,167-square foot single family residence;
- Permit 13-0492 permitted the construction of a 1,995-square foot addition to the home, consisting of three two-car garage stalls, and second story living space. This addition reduced the rear-yard area to 6,630 square feet, and increased the square footage of the primary structure to 3,162 square feet;
- Permit 14-0092 permitted the construction of a 1,620-square foot accessory garage consisting of two two-car stalls. The accessory structure covered 24.4% of the rear yard area;
- Permit 14-0383 permitted an interior remodel to the primary structure to convert one of the existing garages into permanent living space.

### Zoning Ordinance

The subject property is located in the R-1-8 zone, which determines allowed uses and development standards, such as setbacks, building heights, lot coverage, etc. Additional applicable ordinances are as follows:

- **19.04.380 – Definition of “Building”**
  - *Any structure intended for shelter, occupancy, housing or enclosure for persons, animal or chattel. When separated by dividing walls without openings, each portion of such structure so separated shall be deemed a separate building.*
- **19.04.2670 – Definition of “Structure”**
  - *Anything constructed or erected, the use of which requires location on the ground or which is attached to something having a location on the ground (see also “Building”).*
- **19.04.3090 – Definition of “Yard, rear”**
  - *The area extending across the rear of a lot measured between the lot lines and being the minimum horizontal distance between the rear lot line and the rear of the outside wall of the main building. On both corner lots and interior lots, the rear yard shall in all cases be at the opposite end of the lot from the front yard.*
- **19.76.030.B – Accessory Buildings – Area of Coverage**
  - *No accessory building or group of accessory buildings in any residential zone shall cover more than 25% of the rear yard.*
- **19.76.030.J – Yard Requirements**
  - *“Yard” means a space on a lot, other than a court, unoccupied and unobstructed from the ground upward by buildings or structures, except as follows:*
    - *Fences;*
    - *Canopies, not to include temporary or permanent carports;*
    - *Accessory buildings in a rear yard including temporary or permanent carports;*
    - *The ordinary projections of windows where the projection is at least 18 inches above floor level, roofs, cornices, chimneys, flues, and other ornamental features which project into a yard not more than three feet;*
    - *Open or lattice-enclosed exterior stairways, located in a commercial or manufacturing zone, projecting into a yard not more than five feet; and*
    - *Structures less than 18 inches in height from finished ground surface.*

**Staff Analysis:** These code references assist staff in understanding the scope of the applicant’s proposal. The definition of “building” and “structure,” when determining setbacks, is synonymous in the ordinance. The definition of “yard, rear” determines how the rear yard coverage was calculated for the existing accessory garage. Using the ordinance referenced above, it can be concluded that



decks greater than 18” in height are not exempt from setback requirements. The applicant’s proposed second-story attached deck is subject to all relevant primary structure requirements as an addition to the home. This addition results in the reduction of the rear yard area, which in turn causes the existing conforming garage to violate the new rear yard area, becoming a non-conforming structure.

## **VARIANCE CRITERIA**

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The City’s zoning ordinance grants the board of adjustment the authority to authorize variances (19.92.070.A), but only if specific criteria are proven to be satisfied. In order to authorize a variance, the applicant must demonstrate that all criteria are met. The variance criteria are listed below:

1. “Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.”
2. “There are special circumstances attached to the property that do not generally apply to other properties in the same [zoning] district.”
3. “Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district.”
4. “The variance will not substantially affect the general plan and will not be contrary to the public interest.”
5. “The spirit of the zoning ordinance is observed and substantial justice is done.”

The ordinance further states,

“In determining whether enforcement of the ordinance will cause unreasonable hardship, the board may not find an unreasonable hardship unless the alleged hardship is located on or associated with the property for which the variance is sought and comes from circumstances particular to the property, not from conditions which are general to the neighborhood. In determining whether or not enforcement of the ordinance would cause an unreasonable hardship, the board may not find an unreasonable hardship if the hardship is self-imposed or economic. In determining whether or not there are special circumstances attached to the property, the board may find that special circumstances exist only if special circumstances relate to the hardship complained of and deprive the property of the privileges granted to other properties in the same [zoning] district. The applicant shall bear the burden of proving that all the conditions justifying a variance have been met...”

**Staff Analysis: In order for a variance to be granted, the applicant must meet all five criteria of the ordinance. Additionally, a variance cannot be granted if a hardship is self-imposed or economic. Further, a variance may only be granted if the hardship is found to deprive the property of privileges enjoyed by other properties in the same zoning district.**

Attachments:

1. Context Aerial
2. Visual Summary of Applicant’s Request
3. Applicant’s Narrative

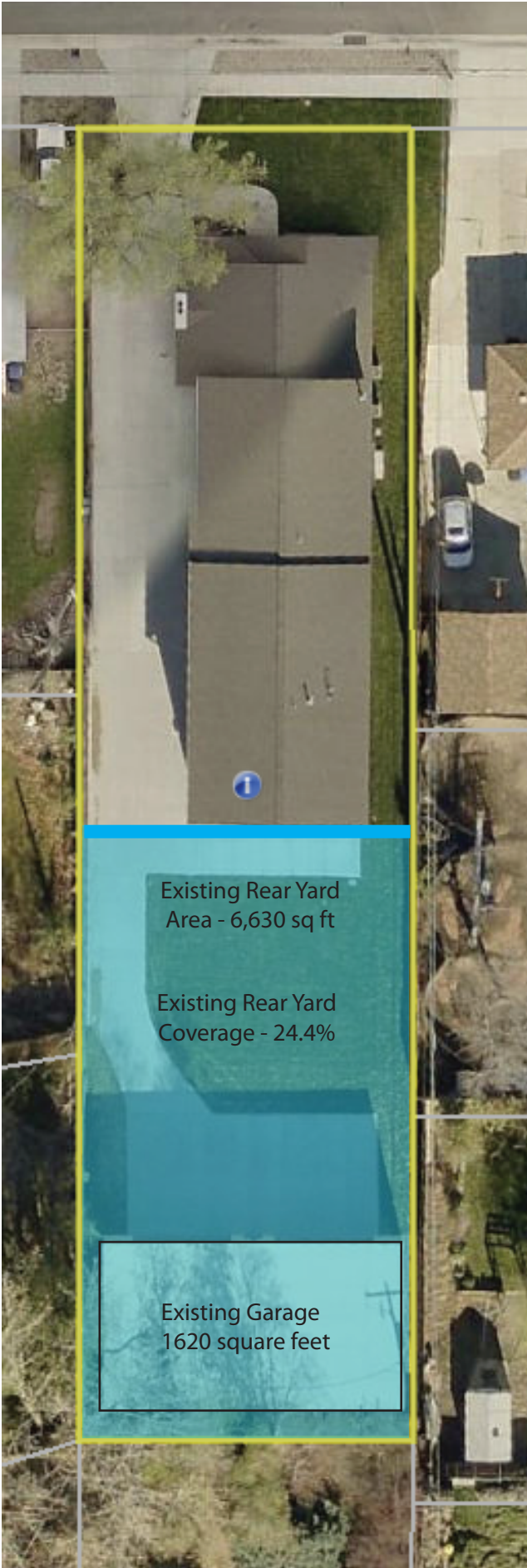




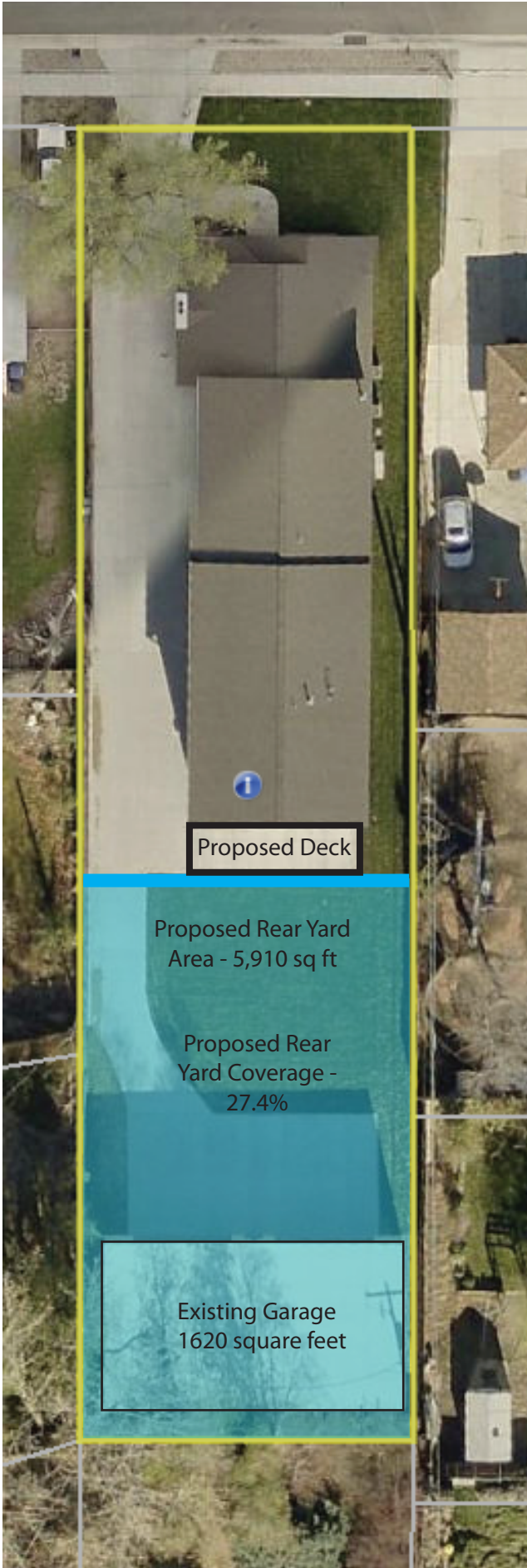


VISUAL SUMMARY OF APPLICANT'S REQUEST

Existing Conditions



Proposed Conditions





## Thomas and Lisa Kaminski

1560 E 7200 S, COTTONWOOD HEIGHTS, UT 84121  
512-799-5139

March 27, 2017

Attention Board of Adjustments Panel:

Please see the following request regarding the residential deck project.

### Scope of Project:

Build a second story 30ft x 12ft deck with handrail on the backside of house over the existing 30ft x 12ft slab A. See photo for better understanding.



The following are the homeowner's responses per 19.92.070:

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.
  - A. During our due diligence period when purchasing the property, we received an appraisal which showed the square footage of the shop in the backyard, however there was no information giving the overall square footage of the rear yard or how much the current shop was taking up. We did request proof of permitting for all new additions and changes, which were provided to us by the real estate agent. Per permit # 13-0492, the only information given was that the shop was required to be less than 25% of the rear yard, no more details were provided on the permit that we received. There were several large issues being addressed during the due diligence period that required much effort, so outside of making sure permits existed for the construction, we considered the existing buildings to be a non-issue and were unaware that they are maxing out the allowed zoning requirements.
  - B. A second story exit onto a deck would allow for safer living conditions due to an emergency. The current unique layout and footprint of the home leaves few ways to safely exit the second floor in a timely manner. The room adjacent to the proposed deck is designed and intended for a mother-in-law apartment. In the event of a fire or other emergency, escaping onto a deck and into fresh air space would be vital and much easier to access than navigating across the apartment to the indoor staircase or jump out of a 2<sup>nd</sup> story window. The proposed deck will have a staircase leading to ground level and can be used to more leisurely exit the premises in a safe manner.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same district.



- A. The previous owner purchased this property to convert into a location for a construction related business. The owner built much of what was considered the original plans until the neighbors and city prevented further construction. Due to inability to proceed with these plans, the owner decided to slightly modify and market the property for residential use. Because of this, the property, specifically the rear yard, has a very commercial look and feel. Adding a deck would bring this property much closer to appearing more residential, something which I feel would benefit the neighborhood.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other properties in the same district.
  - A. Our hobby, astrophotography, is essential upon having the telescope on the second story deck for better viewing due to trees and powerlines surrounding property. In addition, a deck built in the proposed location, is common for the district on two story home configurations. The elevated deck is essential for not only the telescope, but also to create a more practical and usable rear yard space where the slab currently exists.
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
  - A. We feel that having a deck on the back of the house will not affect the health, safety, convenience, order, prosperity and welfare of the present and future inhabitants of the city. The deck should promote safety for the inhabitants of the home by giving a fire escape (as well as other dangers) for the inhabitants in the mother in law space.
  - B. Not only will the deck promote the convenience, order, prosperity and welfare, due to items mentioned throughout this request, the deck will also provide an outdoor living space for those living in the mother in law space. All of which would be at our expense.
5. The spirit of the zoning ordinance is observed and substantial justice is done.
  - A. The purpose and intent of the ordinance is being maintained, and is still being applied fairly even though we are seeking a variance. The deck we are requesting is 360 sq ft, which would equate to 29.8% rear yard coverage.
  - B. We believe that instead of removing from the rear yard square footage, a second story deck would add to the rear yard square footage use due to having an elevated surface occupying the same footprint as the usable space below it.
  - C. The current concrete pad (labeled "A") adjacent to the rear of house is considered part of the rear yard square footage per original construction. Building an elevated deck over the existing concrete pad does not eliminate the pad from the rear yard area, the slab would be used exactly like it is being used now...as part of the rear yard. No rear yard is being eliminated with the addition of the deck.



## Board of Adjustment Staff Report

Meeting Date: April 13, 2017



**PROJECT:** BOA-17-002

**LOCATION:** 2118 E Lorita Way

**REQUEST:** Expansion of a non-complying structure

**OWNER/  
APPLICANT:** Laurens Debirks; 801-360-6724

**RECOMMENDATION: APPROVAL**

### **APPLICANT'S PROPOSAL**

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The applicant's proposal is to expand a non-complying structure by adding an addition and a three-car garage to the existing home at 2118 E Lorita Way. Cottonwood Heights zoning ordinance chapter 19.92 allows for the expansion of / addition to a non-complying structure upon approval from the Board of Adjustment.

### **BACKGROUND**

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The subject parcel is located in the R-1-8 (single-family residential) zone, which requires a 20 foot rear yard setback. The existing home on the property currently has an 18 foot rear yard setback. The county assessor's data shows that the residence was built in 1971, which was prior to the incorporation of Cottonwood Heights. The Cottonwood Heights zoning ordinance defines a noncomplying structure as "a structure that legally existed before its current land use designation and, because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions, or other regulations, excluding those regulations which govern the use of land" (19.04.1800). The current home was approved and built legally under the jurisdiction of Salt Lake County, making the current structure a legal, noncomplying structure.

The applicant's proposed addition is to expand the footprint of the home to the east, within the limits of the existing 18 foot rear yard setback. Although the existing home is nonconforming to rear setback requirements, and the proposed addition is also nonconforming, the proposed addition will not further expand the degree of nonconformity.

### **Zoning**

The subject property is located in the R-1-8 zone. The setbacks in this zone are as follows:

- Minimum Front Setback – 25'
- Minimum Rear Setback – 20'
- Minimum Side Setback – 20' total, minimum of 8' on one side



## **Context**

Staff finds that the proposed addition introduces no significant impact, given that the existing building is already nonconforming. Additionally, the side yard setback of the proposed work exceeds the minimum setback requirement. Because of this, staff finds that the proposed addition will not significantly impact adjacent properties.

## **Ordinance 19.88.070 – Additions, Enlargements, Moving and Reconstruction of Building (Noncomplying Buildings and Nonconforming Uses).**

Cottonwood Heights zoning ordinance 19.88.070 provides relief from the literal enforcement of the zoning ordinance by allowing enlargement of a structure non-conforming to area and dimensional standards of the ordinance. Ordinance 19.88.070 states:

- A. A building occupied by a nonconforming use and a building noncomplying as to height, area or yard regulations shall not be added to or enlarged in any manner or moved to another location on the lot or reconstructed at another location on the lot except as provided by subsection B of this section unless such additions and enlargements comply with the regulations and intent of this title.
- B. A building occupied by a nonconforming use or a building noncomplying as to height, area or yard regulations may be added to or enlarged or moved to a new location on the lot or reconstructed at a new location on the lot upon a permit authorized by the board of adjustment, provided that the board of adjustment, after the hearing, shall find:
  - 1. The addition to, enlargement of, moving of, or reconstruction of the noncomplying building at a new location on the lot will be in harmony with one or more of the purposes stated in section 19.02.020, and shall be in keeping with the intent of this title;
  - 2. That the proposed change does not impose any unreasonable burden upon the lands located in the vicinity of the nonconforming use or noncomplying building.

## **Impact Analysis**

Ordinance 19.88.070 requires that in order for a permit to be authorized, that the board of adjustment finds:

- 1. The addition to, enlargement of, moving of, or reconstruction of the noncomplying building at a new location on the lot will be in harmony with one or more of the purposes stated in section 19.02.020, and shall be in keeping with the intent of this title.

*Ordinance 19.02.020 states the following:*

*19.02.020 Purpose of provisions.*

*This title is designed and enacted for the purpose of promoting the health, safety, convenience, order, prosperity and welfare of the present and future inhabitants of the city, including, among other things, the lessening of congestion in the streets or roads, securing safety from fire and other dangers, providing adequate light and air, classification of land uses and distribution of land development and utilization, protection of the tax base, and securing economy in governmental expenditures, fostering the city's industries, and the protection of both urban and non-urban development.*

**Staff Analysis:** Staff finds that permitting the addition will not negatively affect the health, safety, convenience, order, prosperity and welfare of the present and future inhabitants of the city, and will not create any additional congestion in the streets or roads, will not create a fire safety issue, will not



affect air flow or block natural light from adjoining properties, is a land use type permitted in the R-1-8 zone and is the same land use type as surrounding properties, and has no negative effect on the city's tax base.

2. [Continued from 19.88.070] That the proposed change does not impose any unreasonable burden upon the lands located in the vicinity of the nonconforming use or noncomplying building.

**Staff Analysis:** Staff finds that permitting the addition will not place any unreasonable burden upon neighboring properties because the setback from the proposed addition preserves the existing rear yard area and does not increase the degree of nonconformity on the property.

## **RECOMMENDATION & FINDINGS**

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**Staff recommendation APPROVAL of the request for an expansion of a non-complying structure with the following findings:**

1. The proposal will not negatively affect the health, safety, convenience, order, prosperity and welfare of the present and future inhabitants of the city because the use is the same as currently exists;
2. The proposal will not create any additional congestion in the streets or roads;
3. The proposal will not create a fire safety issue. The carport enclosure and addition will be required to be constructed to meet all current applicable building codes;
4. The proposal will not affect air flow or block natural light from the adjoining properties by conforming with all height regulations;
5. The proposal is permitted in the R-1-8 zone and is the same land use type as surrounding properties, and will cause no negative effect on the city's tax base;
6. The proposal will not place any type of unreasonable burden upon neighboring properties;
7. The proposal is in keeping with the intent of the Cottonwood Heights zoning ordinance.

## **MODEL MOTIONS**

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### ***Approval***

I move that we approve project BOA-17-002, a request from Laurens Debirk for the expansion of a non-complying structure at 2118 E Lorita Way, based on the findings found in the staff report dated April 13, 2017.

- List any additional conditions...
- List any additional findings...

### ***Approval***

I move that we approve project BOA-17-002, a request from Laurens Debirk for the expansion of a non-complying structure at 2118 E Lorita Way, based on the following findings:

- List findings for denial...



## ATTACHMENTS

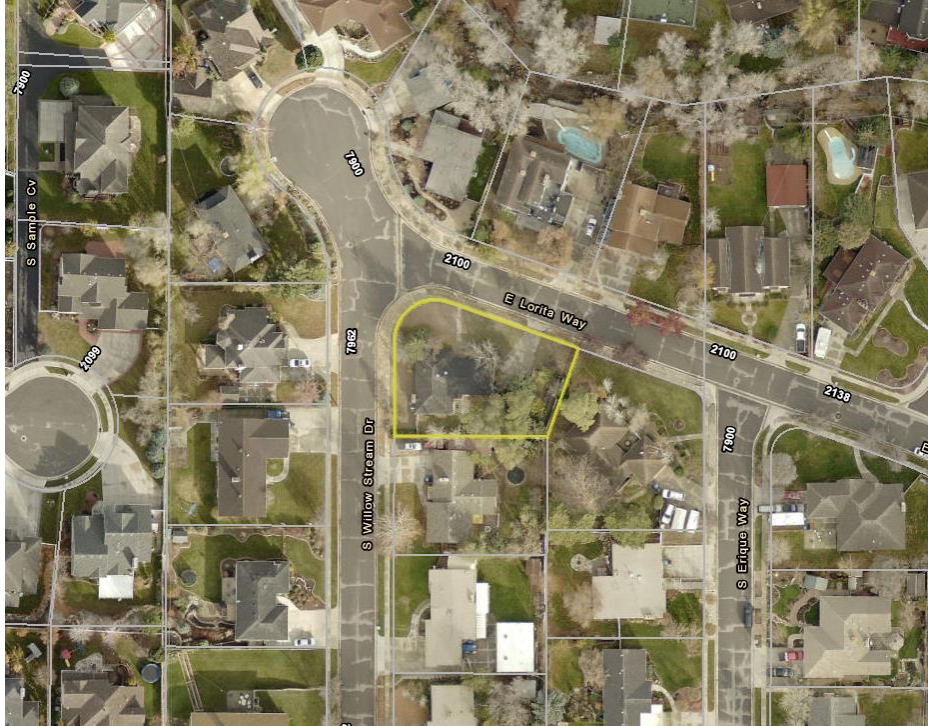
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1. Applicant's written narrative
2. Existing and proposed site plan
3. Proposed floor plan and elevation

Staff Contact: Andy Hulka, Planner; (801) 944-7060

## CONTEXT AERIAL

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## ZONING AERIAL

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## EXISTING CONDITIONS

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